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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation,

No. 2:15-MD-02641-DGC

**DEFENDANTS' NOTICE OF
SUPPLEMENTAL AUTHORITY IN
SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT
AS TO PLAINTIFFS LISA AND
MARK HYDE'S CLAIMS**

(Assigned to the Honorable David G.
Campbell)

(Oral Argument Requested)

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively
"Bard") respectfully file this Notice of Supplemental Authority in support of Bard's

1 Motion for Partial Summary Judgment as to Plaintiffs Lisa and Mark Hyde's Claims
2 ("Motion for Partial Summary Judgment"). [Doc. 7359].

3 Bard offers the following ruling and opinion from the United States Court of
4 Appeals, Seventh Circuit, decided on March 8, 2018: *In re Zimmer, NexGen Knee Implant*
5 *Prod. Liab. Litig.*, 884 F.3d 746 (7th Cir. 2018). A copy of the *In re Zimmer* opinion is
6 attached as Exhibit A.

7 This ruling is relevant to Bard's Motion for Partial Summary Judgment because the
8 Seventh Circuit, after analyzing Wisconsin law, applied the learned intermediary doctrine
9 to the plaintiffs' failure to warn claims in a products liability medical device case. *See id.*
10 at 750-753 ("[T]o the extent that [the plaintiff's] defective-warning claim is based on
11 Zimmer's duty to warn him, it is foreclosed by the learned-intermediary doctrine.").
12 Furthermore, in regards to the medical device manufacturer defendant's alleged failure to
13 warn the plaintiff's surgeon, the Seventh Circuit held that there is no "heeding
14 presumption" under Wisconsin law and that to succeed on a failure to warn claim the
15 plaintiffs must "establish causation by showing that, if properly warned, [the learned
16 intermediary] would have altered [his or her] behavior and avoided injury." *See id.* at
17 753-754.

18 RESPECTFULLY SUBMITTED this 16th day of July, 2018.

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**Attorney for Defendants C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/Richard B. North, Jr.
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